

AMENDED IN SENATE MAY 25, 2005
AMENDED IN SENATE APRIL 27, 2005
AMENDED IN SENATE APRIL 12, 2005

SENATE BILL

No. 864

Introduced by Senator Poochigian

February 22, 2005

An act to amend Sections 6603, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 864, as amended, Poochigian. Sexually violent predators: term of commitment.

Existing law requires the Director of Corrections, prior to the release of a person from custody resulting from conviction for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation.

Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for a 2-year term for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

This bill would, instead, authorize the commitment for a 4-year term, and would make conforming changes. This bill would require that courts give a preference in scheduling commitment trials under these provisions over all other civil matters. *The bill would declare the intent of the Legislature to work with the departments to explore prerelease treatment programs and would require the State Department of Mental Health to share the analysis with the Senate Budget and Fiscal Review Committee and others.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. It is the intent of the Legislature to work with*
2 *the State Department of Corrections and with the State*
3 *Department of Mental Health to explore treatment programs for*
4 *sex offenders to be administered, where feasible, during*
5 *incarceration and prior to release. The State Department of*
6 *Mental Health shall share the results of its analysis conducted*
7 *pursuant to this section with the Senate Budget and Fiscal*
8 *Review Committee and other interested parties. Nothing in this*
9 *section shall be construed to provide additional rights to*
10 *offenders.*

11 ~~SECTION 1.—~~

12 *SEC. 1.5.* Section 6603 of the Welfare and Institutions Code
13 is amended to read:

14 6603. (a) A person subject to this article shall be entitled to a
15 trial by jury, to the assistance of counsel, to the right to retain
16 experts or professional persons to perform an examination on his
17 or her behalf, and to have access to all relevant medical and
18 psychological records and reports. In the case of a person who is
19 indigent, the court shall appoint counsel to assist him or her, and,
20 upon the person's request, assist the person in obtaining an expert
21 or professional person to perform an examination or participate
22 in the trial on the person's behalf.

23 (b) The attorney petitioning for commitment under this article
24 shall have the right to demand that the trial be before a jury.
25 Notwithstanding any provision of law, the court shall give trials
26 under this article preference over all other civil matters,
27 including, but not limited to, matters set forth in Section 36 of the
28 Code of Civil Procedure.

29 (c) (1) If the attorney petitioning for commitment under this
30 article determines that updated evaluations are necessary in order
31 to properly present the case for commitment, the attorney may
32 request the State Department of Mental Health to perform
33 updated evaluations. If one or more of the original evaluators is
34 no longer available to testify for the petitioner in court
35 proceedings, the attorney petitioning for commitment under this

1 article may request the State Department of Mental Health to
2 perform replacement evaluations. When a request is made for
3 updated or replacement evaluations, the State Department of
4 Mental Health shall perform the requested evaluations and
5 forward them to the petitioning attorney and to the counsel for
6 the person subject to this article. However, updated or
7 replacement evaluations shall not be performed except as
8 necessary to update one or more of the original evaluations or to
9 replace the evaluation of an evaluator who is no longer available
10 to testify for the petitioner in court proceedings. These updated or
11 replacement evaluations shall include review of available
12 medical and psychological records, including treatment records,
13 consultation with current treating clinicians, and interviews of the
14 person being evaluated, either voluntarily or by court order. If an
15 updated or replacement evaluation results in a split opinion as to
16 whether the person subject to this article meets the criteria for
17 commitment, the State Department of Mental Health shall
18 conduct two additional evaluations in accordance with
19 subdivision (f) of Section 6601.

20 (2) For purposes of this subdivision, “no longer available to
21 testify for the petitioner in court proceedings” means that the
22 evaluator is no longer authorized by the Director of Mental
23 Health to perform evaluations regarding sexually violent
24 predators as a result of any of the following:

25 (A) The evaluator has failed to adhere to the protocol of the
26 State Department of Mental Health.

27 (B) The evaluator’s license has been suspended or revoked.

28 (C) The evaluator is unavailable pursuant to Section 240 of the
29 Evidence Code.

30 (d) Nothing in this section shall prevent the defense from
31 presenting otherwise relevant and admissible evidence.

32 (e) If the person subject to this article or the petitioning
33 attorney does not demand a jury trial, the trial shall be before the
34 court without a jury.

35 (f) A unanimous verdict shall be required in any jury trial.

36 (g) The court shall notify the State Department of Mental
37 Health of the outcome of the trial by forwarding to the
38 department a copy of the minute order of the court within 72
39 hours of the decision.

SEC. 2. Section 6604 of the Welfare and Institutions Code is amended to read:

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for four years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than four years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the four-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the four-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 3. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The four-year term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. The initial four-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for four years commencing from the date of the termination of the previous commitment.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c)

1 to (i), inclusive, of Section 6601 shall apply to evaluations
2 performed for purposes of extended commitments. The rights,
3 requirements, and procedures set forth in Section 6603 shall
4 apply to extended commitment proceedings.

5 SEC. 4. Section 6605 of the Welfare and Institutions Code is
6 amended to read:

7 6605. (a) A person found to be a sexually violent predator
8 and committed to the custody of the State Department of Mental
9 Health shall have a current examination of his or her mental
10 condition made at least once every year. The person may retain,
11 or if he or she is indigent and so requests, the court may appoint,
12 a qualified expert or professional person to examine him or her,
13 and the expert or professional person shall have access to all
14 records concerning the person.

15 (b) The director shall provide the committed person with an
16 annual written notice of his or her right to petition the court for
17 conditional release under Section 6608. The notice shall contain
18 a waiver of rights. The director shall forward the notice and
19 waiver form to the court with the annual report. If the person
20 does not affirmatively waive his or her right to petition the court
21 for conditional release, the court shall set a show cause hearing to
22 determine whether facts exist that warrant a hearing on whether
23 the person's condition has so changed that he or she would not be
24 a danger to the health and safety of others if discharged. The
25 committed person shall have the right to be present and to have
26 an attorney represent him or her at the show cause hearing.

27 (c) If the court at the show cause hearing determines that
28 probable cause exists to believe that the committed person's
29 diagnosed mental disorder has so changed that he or she is not a
30 danger to the health and safety of others and is not likely to
31 engage in sexually violent criminal behavior if discharged, then
32 the court shall set a hearing on the issue.

33 (d) At the hearing, the committed person shall have the right to
34 be present and shall be entitled to the benefit of all constitutional
35 protections that were afforded to him or her at the initial
36 commitment proceeding. The attorney designated by the county
37 pursuant to subdivision (i) of Section 6601 shall represent the
38 state and shall have the right to demand a jury trial and to have
39 the committed person evaluated by experts chosen by the state.
40 The committed person also shall have the right to demand a jury

1 trial and to have experts evaluate him or her on his or her behalf.
2 The court shall appoint an expert if the person is indigent and
3 requests an appointment. The burden of proof at the hearing shall
4 be on the state to prove beyond a reasonable doubt that the
5 committed person's diagnosed mental disorder remains such that
6 he or she is a danger to the health and safety of others and is
7 likely to engage in sexually violent criminal behavior if
8 discharged.

9 (e) If the court or jury rules against the committed person at
10 the hearing conducted pursuant to subdivision (d), the term of
11 commitment of the person shall run for a period of four years
12 from the date of this ruling. If the court or jury rules for the
13 committed person, he or she shall be unconditionally released
14 and unconditionally discharged.

15 (f) In the event that the State Department of Mental Health has
16 reason to believe that a person committed to it as a sexually
17 violent predator is no longer a sexually violent predator, it shall
18 seek judicial review of the person's commitment pursuant to the
19 procedures set forth in Section 7250 in the superior court from
20 which the commitment was made. If the superior court
21 determines that the person is no longer a sexually violent
22 predator, he or she shall be unconditionally released and
23 unconditionally discharged.

24 SEC. 5. Section 6608 of the Welfare and Institutions Code is
25 amended to read:

26 6608. (a) Nothing in this article shall prohibit the person who
27 has been committed as a sexually violent predator from
28 petitioning the court for conditional release and subsequent
29 unconditional discharge without the recommendation or
30 concurrence of the Director of Mental Health. If a person has
31 previously filed a petition for conditional release without the
32 concurrence of the director and the court determined, either upon
33 review of the petition or following a hearing, that the petition
34 was frivolous or that the committed person's condition had not so
35 changed that he or she would not be a danger to others in that it is
36 not likely that he or she will engage in sexually violent criminal
37 behavior if placed under supervision and treatment in the
38 community, then the court shall deny the subsequent petition
39 unless it contains facts upon which a court could find that the
40 condition of the committed person had so changed that a hearing

1 was warranted. Upon receipt of a first or subsequent petition
2 from a committed person without the concurrence of the director,
3 the court shall endeavor whenever possible to review the petition
4 and determine if it is based upon frivolous grounds and, if so,
5 shall deny the petition without a hearing. The person petitioning
6 for conditional release and unconditional discharge under this
7 subdivision shall be entitled to assistance of counsel.

8 (b) The court shall give notice of the hearing date to the
9 attorney designated in subdivision (i) of Section 6601, the
10 retained or appointed attorney for the committed person, and the
11 Director of Mental Health at least 15 court days before the
12 hearing date.

13 (c) No hearing upon the petition shall be held until the person
14 who is committed has been under commitment for confinement
15 and care in a facility designated by the Director of Mental Health
16 for not less than one year from the date of the order of
17 commitment.

18 (d) The court shall hold a hearing to determine whether the
19 person committed would be a danger to the health and safety of
20 others in that it is likely that he or she will engage in sexually
21 violent criminal behavior due to his or her diagnosed mental
22 disorder if under supervision and treatment in the community. If
23 the court at the hearing determines that the committed person
24 would not be a danger to others due to his or her diagnosed
25 mental disorder while under supervision and treatment in the
26 community, the court shall order the committed person placed
27 with an appropriate forensic conditional release program
28 operated by the state for one year. A substantial portion of the
29 state-operated forensic conditional release program shall include
30 outpatient supervision and treatment. The court shall retain
31 jurisdiction of the person throughout the course of the program.
32 At the end of one year, the court shall hold a hearing to
33 determine if the person should be unconditionally released from
34 commitment on the basis that, by reason of a diagnosed mental
35 disorder, he or she is not a danger to the health and safety of
36 others in that it is not likely that he or she will engage in sexually
37 violent criminal behavior. The court shall not make this
38 determination until the person has completed at least one year in
39 the state-operated forensic conditional release program. The

1 court shall notify the Director of Mental Health of the hearing
2 date.

3 (e) Before placing a committed person in a state-operated
4 forensic conditional release program, the community program
5 director designated by the State Department of Mental Health
6 shall submit a written recommendation to the court stating which
7 forensic conditional release program is most appropriate for
8 supervising and treating the committed person. If the court does
9 not accept the community program director's recommendation,
10 the court shall specify the reason or reasons for its order on the
11 record. The procedures described in Sections 1605 to 1610,
12 inclusive, of the Penal Code shall apply to the person placed in
13 the forensic conditional release program.

14 (f) If the court determines that the person should be transferred
15 to a state-operated forensic conditional release program, the
16 community program director, or his or her designee, shall make
17 the necessary placement arrangements and, within 21 days after
18 receiving notice of the court's finding, the person shall be placed
19 in the community in accordance with the treatment and
20 supervision plan unless good cause for not doing so is presented
21 to the court.

22 (g) If the court rules against the committed person at the trial
23 for unconditional release from commitment, the court may place
24 the committed person on outpatient status in accordance with the
25 procedures described in Title 15 (commencing with Section
26 1600) of Part 2 of the Penal Code.

27 (h) If the court denies the petition to place the person in an
28 appropriate forensic conditional release program or if the petition
29 for unconditional discharge is denied, the person may not file a
30 new application until one year has elapsed from the date of the
31 denial.

32 (i) In any hearing authorized by this section, the petitioner
33 shall have the burden of proof by a preponderance of the
34 evidence.

35 (j) If the petition for conditional release is not made by the
36 director of the treatment facility to which the person is
37 committed, no action on the petition shall be taken by the court
38 without first obtaining the written recommendation of the
39 director of the treatment facility.

1 (k) Time spent in a conditional release program pursuant to
2 this section shall not count toward the term of commitment under
3 this article unless the person is confined in a locked facility by
4 the conditional release program, in which case the time spent in a
5 locked facility shall count toward the term of commitment.

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